MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021/2022

UMY1712 – MALAYSIAN LEGAL SYSTEM

(All Sections / Groups)

30 NOVEMBER 2021

Reading Time: 09:15 AM-09:30 AM
(15 Minutes)
Answering Time: 09:30 AM-12:30 PM
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with **5** Questions only.

3. This paper consists of two parts. **PART A** is **COMPULSORY.** For **PART B, students must attempt either question 4A or 4B.** The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of :
   i. Courts of Judicature Act 1964;
   ii. Federal Constitution of Malaysia;
   iii. Criminal Procedure Code;
   iv. Civil Law Act 1956 (Act 67); and
   v. Rules of Courts

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY

ANSWER ALL QUESTIONS

QUESTION 1

(a) Irrespective of the debates on whether Section 5 of the Civil Law Act 1956, or the Act as a whole which permits the reception of English commercial law in Malaysia should be abolished, the application of English law have undeniably contributed tremendously towards the development of the Malaysian commercial law which is highly regarded in the region.

In light of the relevant case law, discuss the above statement and distinguish the provision with the application of English common law under Section 3 of the Civil Law Act 1956.

(20 marks)

20 Primaland Sdn Bhd ("Primaland") is a successful developer and established several branches in Selangor, Penang and Melaka. In January 2021, Primaland sold a piece of land situated in Selangor to one Lee Jia Zee, who obtained bank facility from Berjaya Bank via loan agreement cum assignment to the Bank. Primaland undertook to the bank to release the separate title to the Bank once the separate title was issued. In March 2021, Primaland re-sold the land to one Pandalena and made Pandalena as the registered proprietor of the land. This prompted Lee Jia Zee and the bank to commence a suit at the court for declarations to assert their legal rights over the land and to invalidate the sale to Pandalena. However, Primaland argued that they are only a vendor and had only a beneficial interest in the land since the title was in the name of Perbadanan Kemajuan Negeri Selangor and under the National Land Code, only a registered proprietor could create a beneficial estate out of his title and validly pass a beneficial interest; and thus, Pandalena had acquired good title.

Discuss the above case with reference to Section 6 of the Civil Law Act 1956.

(5 marks)

(Total: 25 marks)

Continued…

QUESTION 2

Dani, a muslim male was charged in the Selangor Syariah High Court for having attempted to commit sexual intercourse against the order of nature with certain other male persons. The governing provision of the charge is Section 28 of the Syariah Criminal Offences (Selangor) Enactment 1995 read together with Section 52.

Dani challenge the competency of the Selangor State Legislature to enact Section 28. He argued that Section 377 and 377A of the Penal Code, comprised in Federal law, already governed the subject-matter of Section 28 of the 1995 Enactment and, accordingly, the Selangor State Legislature was incompetent to pass Section 28 by virtue of the words 'except in regard to matters included in the Federal List' in item 1 of the State List.

Section 28 of the Syariah Criminal Offences (Selangor) Enactment 1995 reads as follows:

Sexual intercourse against the order of nature

28. Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

While Section 377 and 377A of the Penal Code provide:

Buggery

377. Whoever voluntarily has carnal intercourse with an animal shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine or to whipping.

Carnal intercourse against the order of nature

377A. Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

By virtue of Article 121(1A) of Federal Constitution and relevant latest case law, explain and justify the application of Islamic Law in advising Dani of his argument.

(Total: 25 marks)

Continued…

QUESTION 3

The Attorney General are devoid of a power to decide on the innocence or guilt of an accused person when determining whether to institute criminal proceedings. Those functions are judicial in nature and vest exclusively with the judiciary and this make nonsense the doctrine of separation of powers. The current framework in Malaysia, where the offices of the Attorney General and Public Prosecutor are combined, presents a clear conflict of interest especially when the person that needs to be prosecuted is a member of the government.

With reference to the above statement and relevant case law, explain the power of Attorney General in Malaysia.

(Total: 25 Marks)

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B

QUESTION 4A

Jahid runs a delivery company, hantarlelaju.com. On one unfortunate night, he was out delivering goods due to the excessive orders by his customers. While riding his motorcycle, he was hit by a car driven by Jidin. At the beginning, both parties have agreed to settle everything without the need to lodge a police report. He also received some money from Jidin for the damages and injuries he has suffered. After 5 months, he then received a letter signifying Jidin's intention to sue him for the collision. Confused and not financially viable, he intends to throw the letter.

Advise Jahid on his right and illustrate the procedures and law governing the pre-trial stage in a civil action at the High Court for Jahid.

(Total: 25 Marks)

OR

Continued…

QUESTION 4B

(a) Anwar, a pro-choice person, was arrested by a police officer at the Dataran Merdeka while protesting against the new laws prohibiting the non-vaccinated person from entering public places, which to him was discriminative to the anti-vaccine group. Anwar did not put up a struggle but the police officer roughed him up before handcuffing him. He was then taken to the police station for questioning. During the questioning, Anwar was not told of his charges. Furthermore, he was cuffed to his seat and was denied any communication with any person as the police did not want any interference from outside to aid Anwar in their case. Anwar was kept in a lock-up for days before being produced in front of a magistrate.

Anwar's wife came to seek for you advise. In light of relevant provision under the Criminal Procedure Code and Federal Constitution supported by relevant case law, prepare your advice.

(15 Marks)

(b) During the recent Movement Control Order (MCO), Azmin was stopped at police road-block. He was asked by one of the policemen to show his identity card while the other policeman searched his body. As nothing incriminating was found, the two policemen released him.

In light of relevant provision under the Criminal Procedure Code, demonstrate the situations under which police officers may perform a body search.

(10 Marks)

(Total: 25 Marks)

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